Supreme Court, U.S.
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No. 88-1645

IN THE

Supreme Court Of The United States

OCTOBER TERM, 1988

WILFRED J. CRUZ, SR.,

Petitioner,

v.

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS
and
HOLLAND & LYONS RESTORATION COMPANY
and
HARFORD MUTUAL INSURANCE COMPANY

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR RESPONDENTS HOLLAND & LYONS RESTORATION COMPANYAND HARFORD MUTUAL INSURANCE COMPANY IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the Administrative Law Judge's decision that the claimant failed to establish that he sustained a back injury arising out and in the course of his employment is supported by substantial evidence and is in accordance with the Longshoremen's and Harbor Worker's Compensation Act (LHWCA), 33 U.S.C. 901 et seq.

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OPINIONS BELOW

The opinion of the Court of Appeals (Pet. App. 7-13) is unreported, as is the Court of Appeals order denying Petitioner's Motion for Rehearing En Banc (Pet. App. 5-6) and the order denying Petitioner's Petition for Rehearing (Pet. App. 3). The decision and order of the Benefits Review Board (Pet. App. 14-20) is also unreported, as is the decision and order of the Administrative Law Judge (Pet. App. 21).

JURISDICTION

The judgment of the Court of Appeals (Pet. App. 7-13) was entered on October 12, 1988. The orders denying the Petition for Rehearing and Petition for Rehearing En Banc (Pet. App. 3-6) were filed on December 29, 1988. Petition for Writ of Certiorari was filed on March 29, 1989. The jurisdiction of this court is invoked under 28 U.S.C. 1254(1).

STATEMENT

The only issue in this matter concerns whether the decision and order of the Administrative Law Judge finding that the claimant did not sustain an injury arising out of and in the course of his employment is supported by substantial evidence and in accordance with law.

Claimant claimed that on Friday, June 22, 1979, while working for Respondent Holland & Lyons Restoration Company at a construction area, he injured his back as he attempted to slide a security door into place. Claimant alleges that as a result, on June 24, 1979, he went to the hospital where he was treated for back pain. Claimant stated that he telephoned his supervisor that day and allegedly informed the supervisor of the on-the-job injury.

The Administrative Law Judge found that the claimant did not sustain a back injury arising out of and in the course of employment as the claimant alleged. The Administrative Law Judge relied upon the testimony of the claimant's supervisor to the effect that claimant never telephoned him on June 24, 1979. The Administrative Law Judge also relied on the supervisor's testimony that claimant's son told him on Monday, June 25, 1979, that claimant had injured his back over the weekend and that the injury was not work-related. These statements were corroborated by statements of employer's manager that claimant's son had also informed him that the claimant's injury was not work-related. The employer's first report of injury, moreover, indicated that the injury had occurred over the weekend unrelated to employment. The record reveals further that the claimant had a history of back pain prior to June 22, 1979 unrelated to his employment.

Claimant appealed the Administrative Law Judge's denial of benefits to the Benefits Review Board (BRB). The BRB affirmed the Administrative Law Judge's decision, finding it to be supported by substantial evidence.

Claimant again appealed to the U.S. Court of Appeals for the District of Columbia Circuit. The court noted that because the Administrative Law Judge's decision was supported by substantial evidence, the BRB correctly affirmed that decision to deny disability benefits.

ARGUMENT

The Court of Appeals' unpublished decision is correct and does not conflict with any decision of this court or another court of appeals. In spite of Petitioner's contentions to the contrary, the only issue legitimately raised by Petitioner challenges the factual findings made by the Administrative Law Judge which were affirmed by the BRB and the Court of Appeals. There is no dispute that under the Longshoremen's and Harbor Worker's Compensation Act, the BRB is bound to regard the Administrative Law Judge's findings of fact as conclusive if supported by substantial evidence on the record as a whole. 33 U.S.C. 921(b)(3). See *Stevenson v. Linens of the Week*, 688 F.2nd 93, 96-97 (D.C. Cir. 1982). The Court of Appeals is charged with ascertaining (1) whether the Board adhered to the applicable scope of review, (2) whether the Board committed any errors of law, and (3) whether the Administrative Law Judge's findings are supported by substantial evidence on the record considered as a whole. *Crum v. General Adjustment Bureau*, 738 F.2nd 474, 477 (D.C. Cir. 1984); *Marcus v. Director, OWCP*, 548 F.2nd 1044, 1049 (D.C. Cir. 1976).

In the instant case, the Administrative Law Judge simply found that the claimant did not sustain the injury alleged at work. The BRB affirmed this based upon the evidence of record, as did the Court of Appeals.

While the claimant has attempted to expand this simple factual determination into a multitude of constitutional questions, the simple facts of this case show that this is merely a case where

the claimant is unhappy with the factual findings made by the Administrative Law Judge.

Review of this matter is, therefore, plainly unwarranted.

CONCLUSION

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

FRIEDLANDER, MISLER, FRIEDLANDER,SLOAN & HERZ

Gerald Herz,
Robert C. Baker, Jr.